IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 15936 of 2007(V)

PETITIONER:

BIJU.T.R., HSA(MALAYALAM),
VELLIMON V.H.S.S., VELLIMON,
KUNDARA, KOLLAM.

BY ADV. SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SRI.T.R.RAJESH

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY ITS SECRETARY TO GOVT. GENERAL EDUCATION DEPARTMENT, TRIVANDRUM.**

2. **THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM.**

3. **THE DISTRICT EDUCATIONAL OFFICER, KOLLAM.**

4. **THE MANAGER, VELLIMON V.H.S.S., VELLIMON, KUNDARA, KOLLAM.**

(* ADDITIONAL R5 IS IMPLEADED)

5. **C.S.SAVITHAMBIKA, TRUSTEE, CHERUKULATH SANKARANARAYANA PILLAI EDUCATIONAL TRUST, RESIDING AT 39/2722, DIWAN'S ROAD, KOCHI.**

(ADDL. R5 IS IMPLEADED AS PER ORDER DATED 20.6.2007 IN I.A.NO.7934/2007)

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA
ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
SRI.S.P.ARAVINDAKSHAN PILLAY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 6.9.2005 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: COPY OF THE APPOINTMENT ORDER DATED 23.7.2004 ISSUED BY THE 4TH RESPONDENT.

EXT.P3: COPY OF THE CERTIFICATE DATED 23.5.2007 ISSUED BY THE HEADMASTER OF THE SCHOOL.

EXT.P4: COPY OF THE G.O.(MS) 237/2000/G.Edn. DATED 15.7.2000.

EXT.P5: COPY OF THE G.O.(P) 92/2005/G.Edn. DATED 19.3.2005.

EXT.P6: COPY OF THE JUDGMENT DATED 8.7.2004 IN W.P(C). No.7455/2004.

EXT.P7: COPY OF THE LETTER DATED 26.4.2007 ISSUED BY THE 1ST RESPONDENT.

TRUE COPY

P.A TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.15936 of 2007

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Dated this the 21st day of November, 2007

JUDGMENT

The petitioner was appointed as H.S.A (Malayalam), in the 4th respondent's school on 23.7.2004 in the anticipated vacancy for the year 2004-2005. At the relevant time there were 10 class divisions in the school. Accordingly there were 60 periods for Malayalam. Going by Rule 6D in a school where the number of periods per week is between 55 and 80, three full-time posts of H.S.A.(Malayalam) have to be sanctioned. Petitioner was appointed to the 3rd vacancy. The Government issued Ext.P4 order whereby the number of additional posts had to be decided in accordance with the said order. However, the applicability of Ext.P4 order was considered by this Court in Ext.P6 judgment and in that judgment this Court held that Ext.P4 order cannot govern the issue. Subsequently, Chapter XXIII of Kerala Education Rules was amended in tune with Ext.P4 Government Order by introducing Rule 6J with effect from 19.3.2005. For the year 2004-2005, Ext.P1 staff fixation order was passed only on 6.9.2005 in which Rule 6J was applied, as a result of which, only

two posts were sanctioned for H.S.A.(Malayalam). Relying on Ext.P1 staff fixation order, the petitioner's appointment as H.S.A was refused to be approved by the D.E.O. Ext.P1 staff fixation order and Ext.P7 Government Order rejecting the petitioner's request for sanctioning the 3rd post of H.S.A.(Malayalam) are under challenge in this writ petition with the prayer for a direction to the respondents to sanction additional 3rd post of H.S.A (Malayalam) for the year 2004 - 2005 in the 4th respondent's school.

2. The contention raised is that the petitioner was appointed on 23.7.2004 which appointment cannot be governed by Rule 6J which came into force only on 19.3.2005. Argument is that since no retrospective effect has been given to Rule 6J the staff strength should have been decided in accordance with Rule 6D without reference to Rule 6J in which case there would have been a 3rd post of H.S.A.(Malayalam) to which alone the petitioner was validly appointed. Under the Kerala Education Rules, staff fixation orders were to be passed before 15th July of each year, which if had been complied with by the D.E.O., petitioner's appointment could not have been rejected is the

contention raised.

3. The contention raised by the Government Pleader on behalf of the respondents 1 to 3 is that Ext.P1 staff fixation was passed only on 6.9.2005 by which date Rule 6J had already come into force and therefore there is nothing wrong in passing staff fixation order in accordance with Rule 6J. The learned Government Pleader also raise a contention that Ext.P1 staff fixation order has not been challenged by anybody before filing this writ petition and therefore challenge against the same cannot be entertained at this late stage.

4. I have considered the rival contentions in detail. Admittedly Rule 6J has no retrospective operation. Under the KER, staff fixation orders have to be passed before 15th July of each year. If the D.E.O had passed staff fixation order within the period stipulated by the Kerala Education Rules, it is also not disputed before me that if the staff strength had to be fixed in accordance with Rule 6D without reference to Rule 6J, in which case certainly the approval of the petitioner's appointment could not have been validly rejected. The fact that nobody has challenged Ext.P1 staff fixation order earlier cannot be held

against the petitioner, because staff fixation orders are not made available to the petitioner. In any event, interest of justice demands that the claim of the petitioner who has been continuously working ever since 23.7.2004, should not be denied on the ground that the Manager had not challenged Ext.P1 staff fixation order. Therefore, I am satisfied that the petitioner is entitled to succeed in this writ petition.

5. In the above facts and circumstances, I quash Ext.P7 order of the Government and direct the Government to reconsider the matter in the light of the findings recorded herein above and pass appropriate orders in the matter as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. Consequential orders shall be passed by the D.E.O and salary of the petitioner disbursed within one month from the date of passing of orders by the Government.

The writ petition is disposed of accordingly.

S.SIRI JAGAN, JUDGE

dvs